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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/674,141	09/29/2003	Wesley Erhart	16086RRUS01U (22171.367)	2489
27683 7590 10/01/2010 HAYNES AND BOONE, LLP IP Section 2323 Victory Avenue Suite 700 Dallas, TX 75219				
EXAMINER AL AUBAIDI, RASHIA S				
ART UNIT		PAPER NUMBER		
2614				
MAIL DATE		DELIVERY MODE		
10/01/2010		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/674,141

**Applicant(s)**

ERHART, WESLEY

**Examiner**

RASHA S. AL AUBAIDI

**Art Unit**

2614

**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 07 July 2010.  
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.  
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-15 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.  
6) ☒ Claim(s) 1-15 is/are rejected.  
7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.  
8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.  
10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)  
2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)  
3) ☐ Information Disclosure Statement(s) (PTO/SB/CD)  
Paper No(s)/Mail Date \_\_\_\_\_  
4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_  
5) ☐ Notice of Informal Patent Application  
6) ☐ Other: \_\_\_\_\_

**DETAILED ACTION**

***Response to Amendment***

1. This in response to amendment filed 07/07/2010. No claims have been added. No claims have been canceled. No claims have been amended. Claims 1-15 are still pending in this application.

2. Note that per Applicant request (in the Remarks filed 07/07/2010) to contact Applicant's representative prior to issuing another Office action and to expedite prosecution of the present application, the Examiner attempted to contact Applicant's representative several times and left few voice messages and no response was received.

***Claim Rejections - 35 USC § 103***

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kimoto et al. (US PAT # 5,241,533) in view of Ketcham (US PAT # 6,721,334).

Regarding claim 1, Kimoto teaches a method for transmission over packet networks, the method comprising: detecting, at a first node at least one next node (the

detecting limitation is obvious if not inherent, without detecting a destination node no packet will be transmitted to that node. Also, this limitation reads on storing the next node routing to avoid ping-pong phenomenon, see col. 20-30 and lines 55-68 through col. 2, lines 1-10 ); creating a channel between the first node and the at least one next node (The claimed channel can be the channel between any two nodes such as C and B or E and F, see Fig. 1); receiving, at the first node, a first packet (see col. 3, lines 18-20); detecting a protocol of the first packet (detecting the protocol of the first packet is obvious within the teachings of Kimoto).

Kimoto does not specifically teach "merging the first packet with a second packet of the same protocol" and "transmitting the merged first packet...etc".

However, Examiner now introduces Ketcham which teaches a method and apparatus for packet aggregation in packet-based network. Ketcham specifically teaches making a determination that the **first packet and the second packet combined** can be accommodated in a **single packet having the same protocol** (see col. 14, lines 35-45).

Thus, it would have been obvious to one of ordinary skill in the art at the time the invention was made to incorporate the feature of merging packets into one single packet, as taught by Ketcham, into the Kimoto system in order to provide an enhanced VOIP quality.

Claims 4, 10 and 15 are rejected for the same reasons as discussed above with respect to claim 1. The claimed "interface" as recited in claim 10 is inherent as well as the claimed "processor" and "port". The claimed "threshold" as recited in claims 4 and 15, see col. 4, lines 5-31 of Kimoto. Also, for the claimed feature of "splitting a packet", the Examiner believes that this limitation is obvious and well known in the art. One of an ordinary skill in the art may choose to merge packets or split packets based on the need and desire. This limitation does not rise to the level of patentability. Benefits of merging packets or splitting packets are old and well known in the art of telephony.

Regarding claims 2-3 and 14, having the first and the second packet containing circuit-based information is obvious within the teachings of Kimoto. Also, one may choose to have the packet containing any type of information desired. Thus, this is considered a design choice that does not rise to the level of patentability.

Regarding claims 5 and 7, this limitation is obvious because one of an ordinary skill in the art may choose the threshold to be at any desired level. On one hand, one can set the threshold to be the minimum quality. Other can choose the threshold to be the maximum quality. On the other hand, the threshold in Kimoto is set for failure and redundancy purposes.

Regarding claim 6, Kimoto teaches rejecting a communication related to the first packet (this may read not being able to transmit the packet to one node due to temporary concentrated traffic for example, see col. 3, lines 35-43).

For claims 8 and 12 limitations, this is obvious one may choose to have the node to be is an existing media gateway or any other element. .

For claims 9, 11 and 13, Kimoto teaches node is connected to a circuit-switched voice network (see abstract).

#### ***Response to Arguments***

4. Applicant's arguments filed 07/07/2010 have been fully considered but they are not persuasive.

It is noted that Applicant's main argument (Page 5 of the Remark) is directed to the limitation of "detecting a protocol of the first packet". Applicant specifically argues that "While packets in Kimoto arguably conform to a 'protocol,' it is not apparent from or inherent in the disclosure of Kimoto that packets of the network described therein conform to a different protocols; accordingly, one must logically assume for the specification of Kimoto that all of the packets conform to the same protocol. As a result, there would be no need to 'detect' the protocol of any particular packet of Kimoto". The examiner respectfully disagrees with Applicant's argument for the following reasons: first, conforming to a different protocol, as argued by the Applicant implies that the first

packet and the second packet, as recited in the claim's language are different which not the case. At least claim 1 does not recite that the first packet and the second packet are different and therefore have a different protocol. Thus, it appears that Applicant is reading into the claim's language. Second, it is not clear based on what the Applicant is assuming that all packets in Kimoto conform to the same protocol. There are no clear teachings or citations in Kimoto discloses or even implies that all packets have the same protocol. Third, one of the main aspects and teachings of Kimoto is to increase the efficiency of routing selection and specifically to avoid (ping-pong phenomenon, see col. 1, lines 20-53). And the way to do that is to store information about the packet and the route in a database. Thus, knowing the protocol for the next node or the stored node is an essential step because without determining the protocol for the next node, this might cause failure in routing to that selected node and this will render the invention useless and it will teaches away from the main aspect of the invention. Last, the claim's language is broad and therefore it will be given the broadest reasonable interpretation.

Applicant also argues (Page 6 of the Remark) that "in the present case, it appears that the Examiner has conveniently and impermissibly dismissed as a 'design choice' any limitation that could not be found in the prior art". The Examiner respectfully disagrees with Applicant's argument because the Examiner applied the statement of "a design choice" against the limitation of claims 2-3 and 14 only. The Examiner did not rely on this statement to reject "any limitation that could not be found in the prior art "as alleged by the Applicant. The examiner relied on the general knowledge that having the

first packet and the second packet containing circuit based information is within the teachings of Kimoto and well known in the art of telephony. Examiner added the statement that in general "one may choose to have the packet containing any type of information desired" and this is what the Examiner considered to be a design choice that does not rise to the level of patentability.

### ***Conclusion***

5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Rasha S AL-Aubaidi whose telephone number is (571) 272-7481. The examiner can normally be reached on Monday-Friday from 8:30 am to 5:30 pm.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ahmad Matar, can be reached on (571) 272-7488.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Rasha S AL-Aubaidi/

Primary Examiner, Art Unit 2614